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3 UNITED STATES DISTRICT COURT  
4 CENTRAL DISTRICT OF CALIFORNIA  
5

6 MONROVIA NURSERY  
7 COMPANY,

8 Plaintiff,

9 v.

10 SEVILLE FARMS, INC.

11 Defendant.  
12

Case No. 2:22-cv-7631-MFW-RAO

STIPULATED PROTECTIVE  
ORDER<sup>1</sup>

13  
14 1. A. PURPOSES AND LIMITATIONS

15 Discovery in this action is likely to involve production of confidential,  
16 proprietary or private information for which special protection from public  
17 disclosure and from use for any purpose other than prosecuting this litigation may  
18 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
19 enter the following Stipulated Protective Order. The parties acknowledge that this  
20 Order does not confer blanket protections on all disclosures or responses to  
21 discovery and that the protection it affords from public disclosure and use extends  
22 only to the limited information or items that are entitled to confidential treatment  
23 under the applicable legal principles.

24 B. GOOD CAUSE STATEMENT  
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28 <sup>1</sup> This Stipulated Protective Order is substantially based on the model protective  
order provided under Magistrate Judge Rozella A. Oliver's Procedures.

1           This action is likely to involve trade secrets, customer and pricing lists and  
2 other valuable research, development, commercial, financial, technical and/or  
3 proprietary information for which special protection from public disclosure and  
4 from use for any purpose other than prosecution of this action is warranted. Such  
5 confidential and proprietary materials and information consist of, among other  
6 things, confidential business or financial information, information regarding  
7 confidential business practices, or other confidential research, development, or  
8 commercial information (including information implicating privacy rights of third  
9 parties), information otherwise generally unavailable to the public, or which may be  
10 privileged or otherwise protected from disclosure under state or federal statutes,  
11 court rules, case decisions, or common law. Accordingly, to expedite the flow of  
12 information, to facilitate the prompt resolution of disputes over confidentiality of  
13 discovery materials, to adequately protect information the parties are entitled to keep  
14 confidential, to ensure that the parties are permitted reasonable necessary uses of  
15 such material in preparation for and in the conduct of trial, to address their handling  
16 at the end of the litigation, and serve the ends of justice, a protective order for such  
17 information is justified in this matter. It is the intent of the parties that information  
18 will not be designated as confidential for tactical reasons and that nothing be so  
19 designated without a good faith belief that it has been maintained in a confidential,  
20 non-public manner, and there is good cause why it should not be part of the public  
21 record of this case.

22           C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

23           The parties further acknowledge, as set forth in Section 12.3, below, that this  
24 Stipulated Protective Order does not entitle them to file confidential information  
25 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed  
26 and the standards that will be applied when a party seeks permission from the court  
27 to file material under seal.  
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1           There is a strong presumption that the public has a right of access to judicial  
2 proceedings and records in civil cases. In connection with non-dispositive motions,  
3 good cause must be shown to support a filing under seal. *See Kamakana v. City and*  
4 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006); *Phillips v. Gen. Motors*  
5 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002); *Makar-Welbon v. Sony Electronics,*  
6 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders  
7 require good cause showing), and a specific showing of good cause or compelling  
8 reasons with proper evidentiary support and legal justification, must be made with  
9 respect to Protected Material that a party seeks to file under seal. The parties' mere  
10 designation of Disclosure or Discovery Material as CONFIDENTIAL does not—  
11 without the submission of competent evidence by declaration, establishing that the  
12 material sought to be filed under seal qualifies as confidential, privileged, or  
13 otherwise protectable—constitute good cause.

14           Further, if a party requests sealing related to a dispositive motion or trial, then  
15 compelling reasons, not only good cause, for the sealing must be shown, and the  
16 relief sought shall be narrowly tailored to serve the specific interest to be protected.  
17 *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For  
18 each item or type of information, document, or thing sought to be filed or introduced  
19 under seal in connection with a dispositive motion or trial, the party seeking  
20 protection must articulate compelling reasons, supported by specific facts and legal  
21 justification, for the requested sealing order. Again, competent evidence supporting  
22 the application to file documents under seal must be provided by declaration.

23           Any document that is not confidential, privileged, or otherwise protectable in  
24 its entirety will not be filed under seal if the confidential portions can be redacted.  
25 If documents can be redacted, then a redacted version for public viewing, omitting  
26 only the confidential, privileged, or otherwise protectable portions of the document  
27 shall be filed. Any application that seeks to file documents under seal in their  
28 entirety should include an explanation of why redaction is not feasible.

2. DEFINITIONS

2.1 Action: This pending federal lawsuit.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things) that are produced or generated in disclosures or responses to discovery in this matter. It shall mean any written, printed, recorded, computerized, or graphic matter however produced or recorded, or any kind or description, whether sent or received or neither. This includes the original version of such matter, each identical copy and each non-identical copy, whether different from the original because of marginal notes or other material inserted therein or attached thereto or otherwise, and drafts of both sides thereof.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a party to this Action.

House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm that has appeared on behalf of that party, and includes support staff.

2.11 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL."

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial. The scope of this Stipulation and Order extends to all documents and materials marked “CONFIDENTIAL”, which either Monrovia Nursery Company or Seville Farms, Inc. have a good faith belief constitute confidential information in accordance with Fed. R. Civ. P. 26(c)(1)(G) and/or California law to the extent it applies in diversity actions in this Court.

#### 4. DURATION

Once a case proceeds to trial, information that was designated as CONFIDENTIAL or maintained pursuant to this protective order used or introduced as an exhibit at trial becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Accordingly, the terms of this protective order do not extend beyond the commencement of the trial.

#### 5. DESIGNATING PROTECTED MATERIAL

##### 5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items or oral or written communications that qualify so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

1 Mass, indiscriminate or routinized designations are prohibited. Designations  
2 that are shown to be clearly unjustified or that have been made for an improper  
3 purpose (e.g., to unnecessarily encumber the case development process or to impose  
4 unnecessary expenses and burdens on other parties) may expose the Designating  
5 Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it  
7 designated for protection do not qualify for protection, that Designating Party must  
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in  
10 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise  
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
12 under this Order must be clearly so designated before the material is disclosed or  
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (*e.g.*, paper or electronic  
16 documents, but excluding transcripts of depositions or other pretrial or trial  
17 proceedings), that the Producing Party affix at a minimum, the legend  
18 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
19 contains protected material. Such designation shall be made by stamping or  
20 marking the document and all documents may be bates-labeled. If only a portion of  
21 the material on a page qualifies for protection, the Producing Party also must clearly  
22 identify the protected portion(s) (*e.g.*, by making appropriate markings in the  
23 margins).

24 A Party or Non-Party that makes original documents available for inspection  
25 need not designate them for protection until after the inspecting Party has indicated  
26 which documents it would like copied and produced. During the inspection and  
27 before the designation, all of the material made available for inspection shall be  
28 deemed "CONFIDENTIAL." After the inspecting Party has identified the



documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identifies the Disclosure or Discovery Material on the record, the parties may designate portions of deposition or hearing transcripts as “CONFIDENTIAL” by notifying the opposing party in writing of the specific page and line numbers in which confidential information is discussed. Designations shall be made within thirty (30) days after the final transcript is made available.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a



1 designation of confidentiality at any time that is consistent with the Court's  
2 Scheduling Order.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
4 resolution process under Local Rule 37.1 et seq.

5 6.3 The burden of persuasion in any such challenge proceeding shall be on  
6 the Designating Party. Frivolous challenges, and those made for an improper  
7 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
8 parties) may expose the Challenging Party to sanctions. Unless the Designating  
9 Party has waived or withdrawn the confidentiality designation, all parties shall  
10 continue to afford the material in question the level of protection to which it is  
11 entitled under the Producing Party's designation until the Court rules on the  
12 challenge.

## 13 14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
16 disclosed or produced by another Party or by a Non-Party in connection with this  
17 Action only for prosecuting, defending or attempting to settle this Action. Such  
18 Protected Material shall not be used or disclosed by any person for business or  
19 competitive purposes, or for any purpose other than for the preparation for, and trial  
20 of, this Action, and any appeal thereof. Such Protected Material may be disclosed  
21 only to the categories of persons and under the conditions described in this Order.  
22 When the Action has been terminated, a Receiving Party must comply with the  
23 provisions of section 13 below (FINAL DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a  
25 location and in a secure manner that ensures that access is limited to the persons  
26 authorized under this Order.

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated

2 “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this Action, as  
4 well as employees of said Outside Counsel of Record to whom it is reasonably  
5 necessary to disclose the information for this Action;

6 (b) the officers, directors, and employees (including House Counsel) of  
7 the Receiving Party to whom disclosure is reasonably necessary for this Action;

8 (c) Experts (as defined in this Order) of the Receiving Party to whom  
9 disclosure is reasonably necessary for this Action and who have signed the  
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff;

13 (f) professional jury or trial consultants, mock jurors, and Professional  
14 Vendors to whom disclosure is reasonably necessary for this Action and who have  
15 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (g) the author or recipient of a document containing the information or a  
17 custodian or other person who otherwise possessed or knew the information;

18 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
19 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
20 requests that the witness sign the form attached as Exhibit A hereto; and (2) they  
21 will not be permitted to keep any confidential information unless they sign the  
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
23 agreed by the Designating Party or ordered by the court. Pages of transcribed  
24 deposition testimony or exhibits to depositions that reveal Protected Material may  
25 be separately bound by the court reporter and may not be disclosed to anyone except  
26 as permitted under this Stipulated Protective Order; and

27 (i) any mediator or settlement officer, and their supporting personnel,  
28 mutually agreed upon by any of the parties engaged in settlement discussions.

Any person to whom disclosure is made shall be advised of and become subject to the provisions of this Stipulated Protective Order requiring that the material and information be held in confidence.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

#### 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed

Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

#### 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

#### 12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
 2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any  
 4 Protected Material must comply with Local Civil Rule 79-5. Protected Material  
 5 may only be filed under seal pursuant to a court order authorizing the sealing of the  
 6 specific Protected Material at issue. If a Party's request to file Protected Material  
 7 under seal is denied by the court, then the Receiving Party may file the information  
 8 in the public record unless otherwise instructed by the court.

9  
 10 13. FINAL DISPOSITION

11 After the final disposition of this Action, as defined in paragraph 4, within 60  
 12 days of a written request by the Designating Party, each Receiving Party must return  
 13 all Protected Material to the Producing Party or destroy such material. As used in  
 14 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
 15 summaries, and any other format reproducing or capturing any of the Protected  
 16 Material. Whether the Protected Material is returned or destroyed, the Receiving  
 17 Party must submit a written certification to the Producing Party (and, if not the same  
 18 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
 19 (by category, where appropriate) all the Protected Material that was returned or  
 20 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
 21 abstracts, compilations, summaries or any other format reproducing or capturing any  
 22 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
 23 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
 24 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
 25 reports, attorney work product, and consultant and expert work product, even if such  
 26 materials contain Protected Material. Any such archival copies that contain or  
 27 constitute Protected Material remain subject to this Protective Order as set forth in  
 28 Section 4 (DURATION).

14. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: February 6, 2023

BLAKELEY LC

By: /s/ David Mannion

DAVID MANNION

Attorneys for Plaintiff  
Monrovia Nursery Company

DATED: February 6, 2023

KELLY HART & HALLMAN LLP

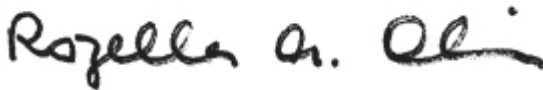
By: /s/ Katherine T. Hopkins

KATHERINE T. HOPKINS

Attorneys for Defendant  
Seville Farms, Inc.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: February 9, 2023



HON. ROZELLA A. OLIVER  
United States Magistrate Judge



1 Pursuant to L.R. 5-4.3.4(a)(2)(i), I attest that all other signatories listed, and  
2 on whose behalf this filing is submitted, concur in the filing's content and have  
3 authorized the filing.

4  
5 DATED: February 6, 2023

6 /s/ Katherine T. Hopkins

7 Katherine T. Hopkins  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Stipulated Protective Order that  
was issued by the United States District Court for the Central District of California  
on [date] in the case of \_\_\_\_\_ **[insert formal name of the case and the  
number and initials assigned to it by the court]**. I agree to comply with and to be  
bound by all the terms of this Stipulated Protective Order and I understand and  
acknowledge that failure to so comply could expose me to sanctions and punishment  
in the nature of contempt. I solemnly promise that I will not disclose in any manner  
any information or item that is subject to this Stipulated Protective Order to any  
person or entity except in strict compliance with the provisions of this Order.  
I further agree to submit to the jurisdiction of the United States District Court for the  
Central District of California for enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.  
I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with  
this action or any proceedings related to enforcement of this Stipulated Protective  
Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_